

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Misuse of Internet Protocol (IP) Captioned Telephone Services)	CG Docket No. 13-24
)	
Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities)	CG Docket No. 03-123
)	

COMMENTS OF CTIA-THE WIRELESS ASSOCIATION®

CTIA-The Wireless Association® (“CTIA”)^{1/} hereby submits these comments in response to the Notice of Proposed Rulemaking issued by the Federal Communications Commission (“Commission” or “FCC”) regarding the rules governing the provision and marketing of Internet Protocol Captioned Telephone Service (“IP CTS”).^{2/} CTIA shares the Commission’s goals of ensuring that IP CTS services are available for persons with hearing disabilities while curbing the fraud, waste and abuse to which the Telecommunications Relay Service Fund (the “TRS Fund” or “Fund”) has been subject. Accordingly, CTIA respectfully submits that:

- The Commission should make permanent the interim prohibition against referrals for rewards, the interim registration and certification requirements, and the “default captions

^{1/} CTIA – The Wireless Association® is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the organization includes Commercial Mobile Radio Service (“CMRS”) providers and manufacturers, including cellular, Advanced Wireless Service, 700 MHz, broadband PCS, and ESMR, as well as providers and manufacturers of wireless data services and products.

^{2/} See *Misuse of Internet Protocol (IP) Captioned Telephone Service*, Order and Notice of Proposed Rulemaking, CG Docket No. 13-24, FCC 13-13 (rel. Jan. 25, 2013) (“*NPRM*”).

off” rule for equipment that is designed to be used for, or is distributed for use of, IP CTS.

- To further limit misuse or inadvertent use of IP CTS equipment, the Commission should require that new equipment that is designed to be used for, or is distributed for use of, IP CTS bear a label specifying that the device may only be used by people with captions on who are deaf or hard of hearing.
- The Commission should clarify that the interim and permanent rules it adopts in this proceeding apply only to equipment primarily intended to be used for, or distributed for use of, IP CTS services and carefully consider applying those rules to applications or software that run on generally available wireless devices and platforms.

Implementing rules consistent with CTIA’s recommendations will help ensure that individuals with hearing disabilities have access to innovative and competitive products and services without creating an unsustainable burden on the TRS Fund.

I. INTRODUCTION

New forms of Internet-based TRS like IP CTS provide critical services to the deaf and hard of hearing.^{3/} Innovative products and services offered by CTIA member companies across a variety of platforms are used to support IP CTS and other forms of TRS. In particular, wireless handsets, smartphones and tablets are capable of supporting accessibility solutions and a variety

^{3/} IP CTS allows hearing and speech disabled persons to communicate in a manner that is “functionally equivalent” to a hearing individual by enabling persons who have difficulty hearing over the telephone to simultaneously listen to the other party and read captions of what they are saying. *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 04-137 ¶ 3 (rel. June 30, 2004); *see also* 47 U.S.C. § 225(a)(3) (defining TRS as “telephone transmission services that provide the ability for an individual who is deaf, hard of hearing, deaf-blind, or who has a speech disability to engage in communication by wire or radio with one or more individuals, in a manner that is functionally equivalent to the ability of a hearing individual who does not have a speech disability to communicate using voice communication services by wire or radio”).

of relay services and applications, such as web and wireless captioned services, instant message relay, and relay conference captioning. In addition, wireless service providers offer an increasing array of services, including voice, text and data plans designed specifically for persons with disabilities.^{4/} The combination of these products and services enable persons who are deaf or hard of hearing to utilize TRS services like IP CTS conveniently and economically in order to communicate on an equivalent basis with conventional voice telephone users.

The Commission's support of IP CTS and other forms of TRS through the TRS Fund is consistent with its obligations under Section 225 of the Act and enables consumers to enjoy the benefits of the products and services that wireless providers and others offer.^{5/} Contributions to the TRS Fund enable the provision of these important services.^{6/} However, as contributors to

^{4/} For example, Sprint's Relay Data Only Plan and AT&T's Text Accessibility Plan ("TAP") include unlimited Internet access and text messaging for people who are deaf or hard of hearing. See Sprint, Sprint Relay Data Only Plan, <http://www.sprintrelaystore.com/?page=learnmoredata> (last visited Feb. 20, 2013); AT&T, Disability Resources, Hearing Aid Compatibility, <http://www.wireless.att.com/learn/articles-resources/disability-resources/hearing-aid-compatibility.jsp#tap> (last visited Feb. 20, 2013). Likewise, Verizon Wireless and U.S. Cellular offer messaging-only plans for individuals who are deaf or hard of hearing or who want to use messaging as their primary source of communication, while T-Mobile offers a suite of unlimited data plans with flexible pricing. See Verizon Wireless, Nationwide Messaging Plan with No Voice Minutes, <http://www.verizonwireless.com/b2c/splash/messagingplans.jsp> (last visited July 24, 2012); U.S. Cellular, Messaging Only Plans, <http://www.uscellular.com/plans/text-only.html> (last visited July 24, 2012); T-Mobile, Unlimited Nationwide 4G Data, <http://deals.t-mobile.com/unlimited-data-plan> (last visited Feb. 20, 2013).

^{5/} See 47 U.S.C. § 225 (b)(1) (providing that "the Commission shall ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals"). In order to fulfill this requirement, the Commission established the TRS Fund. The Fund Administrator uses funds contributed from carriers that provide interstate telecommunications services to compensate eligible TRS providers for the costs of providing TRS, including traditional TRS, interstate Speech-to-Speech ("STS"), IP Relay, and Video Relay Services ("VRS"). See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 19 FCC Rcd 12475 ¶ 8 (2004); see also 47 C.F.R. § 64.604(c)(5)(iii)(E)-(F) (setting forth the eligibility requirements for TRS providers seeking to receive compensation from the TRS Fund).

^{6/} Carriers contribute to the TRS Fund on a basis determined by end-user telecommunications revenue and a contribution factor determined annually by the Commission. See *Contributions to the Telecommunications Relay Services Fund*, Report and Order, 26 FCC Rcd 14532 ¶ 5 (2011). The amount contributed to the TRS Fund by telecommunications service providers is the product of the carrier's

the TRS Fund, wireless providers are also concerned about the practices of some IP CTS providers. As described in the *NPRM*, these practices are unnecessarily expanding the TRS Fund in ways that will ultimately be borne by all consumers of telecommunications services.

As the Commission notes, IP CTS has recently experienced rapid growth, with the total number of minutes for which reimbursement was sought increasing by an average of 11 percent each month during the period from June to October of last year.^{7/} Accordingly, in the Order that is the companion to the *NPRM*, the Commission took action on an interim basis to curb the growth in requested reimbursements from IP CTS service providers. To ensure that the TRS Fund is not exhausted, requiring the Commission to borrow funds commercially, and that legitimate TRS providers can be reimbursed for providing communications services to persons with hearing disabilities, CTIA supports making the interim actions permanent. CTIA also urges the Commission to adopt its proposal to require labeling for devices primarily intended to be used for, or distributed for the use of, IP CTS services.

II. THE TARGETED STEPS PROPOSED BY THE COMMISSION TO CURB TRS FUND ABUSES ARE APPROPRIATE.

A. The Commission Should Make Permanent the Interim Prohibition Against Referrals for Rewards.

interstate end-user telecommunications revenue and a contribution factor determined annually by the Commission, the latter of which is based on the ratio between expected TRS Fund expenses to the contributors' revenues subject to contribution. *See* 47 C.F.R. § 64.604(c)(5)(iii). Carriers may collect the amount they are required to contribute to the TRS Fund from consumers as part of the cost of interstate telephone services. *See Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, 8 FCC Rcd 1802 ¶ 22 (1993); *see also* 47 C.F.R. § 64.604(c)(5)(ii) ("Costs caused by interstate TRS shall be recovered from all subscribers for every interstate service"). As the Wireline Competition Bureau reported, telecommunications traffic is shifting from wireline to wireless. *Local Telephone Competition: Status as of December 31, 2011*, Industry Analysis and Technology Division, Wireline Competition Bureau 4-5 (January 2013). Likewise, while consumer expenditures for landline telephone are decreasing, expenditures for wireless are increasing. *Trends in Telephone Service*, Industry Analysis and Technology Division, Wireline Competition Bureau (September 2010). Therefore, the percentage of the revenues in the TRS Fund contributed by wireless providers' are growing and will continue to grow.

^{7/} *See NPRM* ¶ 6.

As the Commission notes, customers recruited through referral programs steadily increased during each month of 2012.^{8/} Participants in these programs may be acting in good faith by, for example, raising money for charitable organizations.^{9/} Unfortunately, these good faith intentions have two negative consequences. First, they encourage users to enroll that do not otherwise require TRS services.^{10/} Second, the incentives paid become part of the cost structure for providing IP CTS, thereby increasing the need to generate TRS Fund contributions. The Commission therefore properly determined that a prohibition against incentive-based referral programs would help curb use of IP CTS by persons who are not deaf or hard of hearing. Legitimate audiologists and other professionals who work with the hard-of-hearing community should not require incentives to recommend needed services. The Commission should make this interim rule permanent in order to continue to protect the integrity and sustainability of the TRS Fund.

B. The Commission Should Make Permanent the Interim Registration and Certification Requirements.

The Commission notes that IP CTS is a form of TRS that may be attractive to both hearing and hearing disabled individuals.^{11/} IP CTS is easy and convenient to use, which may contribute both to misuse and inadvertent use by persons who are not deaf or hard of hearing and who therefore do not require IP CTS devices and services to facilitate communications.^{12/} Because of this risk, and coupled with the threat to the TRS Fund's sustainability due to increased requests for reimbursement, the Commission properly adopted interim rules requiring

^{8/} See *NPRM* ¶ 13 n.35.

^{9/} *Id.* ¶ 14

^{10/} *Id.*

^{11/} *Id.* ¶ 20.

^{12/} *Id.*

IP CTS providers to register each new IP CTS user for service. In particular, it required providers to register each new IP CTS user and to obtain a self-certification of the user's hearing loss.^{13/} Users who obtain IP CTS equipment for less than \$75 from a source other than a government program must obtain a third-party eligibility certification.^{14/}

Although the Commission should make permanent its interim registration and certification requirements, it need not go further by adopting quantitative threshold requirements for users to be eligible for IP CTS. Setting a value for hearing loss or speech discrimination as a threshold for use of CTS has practical limitations, including requiring persons with hearing disabilities to undergo testing. Further, the test for evaluating an individual's ability to discriminate speech is not flawless – an individual may be able to hear sound without discerning the words.^{15/} Because there is no definitive speech discrimination score that can serve as a proxy to simplify the certification process, any such quantitative standard would be ineffective in helping to prevent persons without hearing disabilities from using IP CTS without possibly impeding those who may truly require the services from obtaining them.

Additionally, rather than requiring third-party certification for users that accept equipment, the Commission should prohibit IP CTS equipment providers from making available equipment for no or *de minimis* cost. Obtaining third-party certification may be administratively burdensome and will invite the same type of variation in testing that militates against establishing eligibility thresholds. Of course, the limitation should not apply if the IP CTS equipment is available through government programs designed to subsidize the costs of IP CTS

^{13/} *Id.* ¶ 24.

^{14/} *Id.*

^{15/} *See* Declaration of Doctor Ingrid McBride, CG Docket No. 03-123 (filed Jan. 9, 2013).

equipment for those individuals who cannot afford such equipment (regardless of whether the equipment is provided by the government program or commercial provider).

C. The Commission Should Make Permanent the “Default Captions Off” Rule.

The Commission observes that most IP CTS equipment in use today automatically displays IP CTS captions.^{16/} As a result, IP CTS equipment may be used as a matter of course for IP CTS calls by persons who do not require the service, unnecessarily driving up IP CTS use.^{17/} The interim rules therefore require IP CTS providers to ensure that equipment used in conjunction with their services have captions turned off as the default setting at the beginning of each call so that the consumer must take an affirmative step to turn on the captions each time he or she wishes to make an IP CTS call.^{18/}

The Commission should make this interim rule permanent. This simple step will prevent captioned telephone service from being provided automatically, thereby ensuring that IP CTS service is not inadvertently used by those who do not require it. Any burden hearing disabled users may encounter in taking the affirmative step of enabling will be outweighed by the substantial benefit of ensuring that TRS-funded equipment is not misused or abused by those who do not require IP CTS, and that the TRS fund remains viable. The permanent rule should apply in all environments. It would be unnecessarily burdensome to have different rules for phones in work and home environments. IP CTS phones can be used in different locations and there will be no way to monitor where devices are located. Moreover, IP CTS devices can easily be relocated from place-to-place and individual’s living arrangements can change.

^{16/} See *NPRM* ¶ 27.

^{17/} *Id.*

^{18/} *Id.* ¶ 28.

D. The Commission Should Adopt the Proposed Rules on Device Labeling.

In addition to the interim rules already adopted, the Commission also seeks comment on whether to require that new IP CTS equipment bear a label indicating that captioning is to be used only by those people with hearing loss who require captions to communicate via telephone.¹⁹ The Commission should adopt a labeling requirement. As the Commission noted, much of the increase in use of IP CTS has resulted from the inadvertent use of IP CTS equipment and services by hearing individuals.²⁰ Labeling will help reduce that use. However, as the Commission recognizes, IP CTS phones can also be used by hearing individuals. Consumers should not be required to acquire a second phone if hearing and deaf or hard of hearing individuals use the same phone. Therefore, as the proposed rules envision, the label should make it clear that hearing individuals are only prohibited from using the phone with the captions on and should warn hearing individuals against activating the captioning function.

E. The Proposed Rules Should Apply Only to Equipment Primarily Intended to be Used for, or Distributed for Use of, IP CTS Services.

While CTIA supports the adoption of rules that limit the use of IP CTS equipment to persons who are deaf or hard of hearing, the Commission should make clear that its rules apply only to such equipment that is primarily intended to be used for, or distributed for the use of IP CTS services. As the Commission is aware, there are countless applications and software that run on wireless devices. Some applications and software may enhance the ability of hard of hearing customers to use wireless devices that are not otherwise primarily designed for hard of hearing users. As noted above, wireless devices available to the general public may have built-in accessibility solutions or support services or applications designed for persons with disabilities. However, the Commission should not impose its new rules on wireless devices merely because

¹⁹ See NPRM ¶ 55.

²⁰ *Id.*

they are capable of running those applications and software. In other words, a smartphone or other wireless devices not primarily intended to be used for, or distributed for the use of, IP CTS should not be considered IP CTS equipment merely because it runs software or applications that support IP CTS.

In particular, CTIA supports the adoption of rules that ensure IP CTS providers do not give away or loan IP-CTS equipment in order to enlist customers who might not otherwise have a reason to use the service.^{21/} However, the Commission's rules governing the distribution of IP CTS equipment at little or no cost should not apply to wireless devices merely because they are capable of supporting IP CTS software. For example, the rules should not apply to wireless handsets subsidized by wireless service providers. This practice offers wireless consumers the ability to see the value of an innovative and competitive wireless marketplace. Nor should the Commission require IP CTS notification labeling of wireless devices merely because they are capable of supporting IP CTS software, applications or programs. Imposing the proposed IP-CTS rules on wireless handsets merely because such equipment is capable of supporting IP-CTS service would unnecessarily inhibit the ability of service providers to compete to offer innovative wireless handsets to prospective customers.

In addition, the Commission should carefully consider whether to apply the proposed rules to IP CTS applications designed to run on wireless devices. For example, an IP CTS application need not be required to set "default captions off" because the user's affirmative action of initiating the application accomplishes the same goal.

III. CONCLUSION

The Commission acted appropriately when it adopted the interim rules designed to curb TRS Fund fraud, waste and abuse. Because of the importance of accessible telephone services

²¹ See *NPRM* ¶ 40.

for persons who are deaf or hard of hearing, the Commission should make permanent its interim rules prohibiting referral and incentive programs and requiring “captions off” as a default setting on equipment primarily designed or intended to be used for IP CTS. The Commission should likewise make permanent its interim certificate and registration requirements. Finally, the Commission should adopt the proposed rules requiring labeling of devices intended to be used for or distributed for use of IP CTS. In each case, the Commission should clarify that the rules apply only to equipment primarily intended to be used for, or distributed for use of, IP CTS services and carefully consider applying the interim rules to applications or software that run on generally available wireless devices and platforms.

Respectfully submitted,

By: /s/ Krista L. Witanowski

Krista L. Witanowski
Assistant Vice President, Regulatory Affairs

Michael F. Altschul
Senior Vice President and General Counsel

Christopher Guttman-McCabe
Vice President, Regulatory Affairs

Matthew B. Gerst
Director, State Regulatory & External
Affairs

CTIA-The Wireless Association®
1400 Sixteenth Street, N.W.
Suite 600
Washington, D.C. 20036
(202) 785-0081

February 26, 2013